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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Antonio Zavala;

Plaintiff,

vs.

Vasile Herlo and Ana Herlo, husband and
wife; and Tampico Apartments Inc., an
Arizona corporation;

Defendants.

Case No.: _____

COMPLAINT

JURY DEMAND

Plaintiff Antonio Zavala, by and through John L. Collins, Trey Dayes, and Dawn
M. Sauer, of and for the PHILLIPS DAYES LAW GROUP PC, for his Complaint against
Defendants Vasile Herlo, Ana Herlo, and Tampico Apartments Inc. avers as follows:

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NATURE OF THE CASE

1
2 1. The Fair Labor Standards Act is designed to eliminate “labor conditions
3 detrimental to the maintenance of the minimum standard of living necessary for health,
4 efficiency and general well-being of workers.” 29 U.S.C. § 202(a). To achieve its goals,
5 the FLSA sets minimum wage and overtime pay requirements for covered employers. *See*
6 29 U.S.C. §§ 206(a), 207(a).

7
8 2. Employers must compensate employees for all work that employers permit
9 employees to perform. *See* 29 C.F.R. § 785.11. In such cases, it is the responsibility of
10 employers’ management to ensure that work is not performed if management does not
11 desire for such work to be performed. *See* 29 C.F.R. § 785.13. Employers may not accept
12 the benefits of employees performing work without compensating the employees for their
13 work. *Id.*

14 3. Plaintiff brings this action against Defendants for unlawful failure to pay
15 overtime wages in direct violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et*
16 *seq.* (“FLSA”).

17
18 4. For at least one year prior to the filing of this action, Defendants had a
19 consistent policy and practice of requiring its employees to work well in excess of forty
20 (40) hours per week without paying them time and one-half for hours worked over forty
21 (40) hours per week.

22 5. For at least one year prior to the filing of this action, Plaintiff worked at least
23 fifteen hours in excess of forty (40) hours per week and was not paid time and one-half.

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1 6. Plaintiff seeks to recover unpaid overtime compensation and an equal amount
2 of liquidated damages, including interest thereon, statutory penalties, attorneys' fees, and
3 costs pursuant to 29 U.S.C. § 216(b).

4 7. In addition, Defendants improperly deducted amounts from the wages that
5 they actually paid to Plaintiff, contrary to the terms of their employment of Plaintiff.

6 8. As such, Plaintiff seeks to recover the unpaid wages resulting from these
7 improper and unauthorized deductions and an award of treble damages, including interest
8 thereon, statutory penalties, attorneys' fees, and costs pursuant to A.R.S. §§ 23-355 and
9 12-341.01.

10 9. Finally, because Plaintiff provided labor, services, and materials for the
11 benefit of Defendants' real property, consisting of a lot or lots in an incorporated city or
12 town, at the instance of Defendants, the owners of the lot or lots or parcels of land,
13 Plaintiff has asserted a mechanics' lien pursuant to A.R.S. § 33-983

14
15 **JURISDICTION AND VENUE**

16 10. This Court has jurisdiction over the subject matter and the parties hereto
17 pursuant to A.R.S. §§ 12-123 and 12-401.

18 11. Venue is proper under A.R.S. § 12-401 because the conduct complained of
19 herein occurred in Maricopa County, Arizona.

20
21 **PARTIES**

22 12. At all times material hereto, Plaintiff Antonio Zavala was and continues to be
23 a resident of Maricopa County, Arizona.

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1 13. On information and belief, at all times material hereto, Defendant Vasile
2 Herlo was and continues to be a resident of Maricopa County and is subject to the
3 jurisdiction of this Court.

4 14. On information and belief, at all times material hereto, Defendant Ana Herlo
5 was and continues to be a resident of Maricopa County and is subject to the jurisdiction
6 of this Court.

7 15. On information and belief, Defendants Vasile Herlo and Ana Herlo are
8 husband and wife, and all conduct complained of herein was engaged in by these
9 Defendants for the benefit of the marital estate, which is liable to Plaintiff for his
10 damages.
11

12 16. On information and belief, at all times material hereto, Defendant Tampico
13 Apartments Inc. was and continues to be an entity organized under the law of the State of
14 Arizona, doing business in Maricopa County, Arizona, and is subject to the jurisdiction of
15 this Court.

16 17. On information and belief, Defendant Vasile Herlo makes all decisions on
17 the daily activities of its employees and makes all decisions regarding pay policies.

18 18. At all relevant times, Plaintiff was an “employee” of Defendants, as defined
19 by 29 U.S.C. § 203(e)(1).
20

21 19. The provisions set forth in 29 U.S.C. § 207 of the FLSA apply to Defendants.

22 20. At all relevant times, each of the Defendants was and continues to be an
23 “employer” as defined in 29 U.S.C. § 203(d).

24 //

21. Each of the Defendants should be deemed an “employer” for purposes of the FLSA including, without limitation, 29 U.S.C. § 216.

22. All Defendants are co-equally liable for all matters.

23. At all times material to this action, Defendant was and continues to be an “enterprise engaged in commerce or in the production of goods for commerce” as defined by 29 U.S.C. § 203(s)(1).

24. On information and belief, at all relevant times, the annual gross revenue of Defendant exceeded, and continue to exceed, \$500,000.00.

FACTUAL BACKGROUND

25. Defendants own and operate a residential apartment complex known as the “Tampico Apartments” in Maricopa County, Arizona, located at 6130 N. 7th Street, Phoenix, Arizona, and more particularly described as follows:

Lot 5, Block 1, ORANGEWOOD, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 2 of Maps, page 50;

EXCEPT the West 986.60 feet; and

EXCEPT the North 150 feet of the East 142 feet thereof.

(herein as the “Apartments”).

26. Defendants hired Plaintiff in November 2012 to work as a handyman and landscaper at the Apartments.

27. Defendants agreed to pay Plaintiff the amount of \$700.00 payable every two weeks and to provide Plaintiff with housing in the Apartment complex in exchange for his labors.

1 28. In addition, Defendants agreed to provide all materials and supplies
2 necessary for Plaintiff to perform his labors or, in the alternative, to reimburse Plaintiff
3 for any costs and expenses incurred in purchasing supplies or materials for use in the
4 performance of his labors.

5 29. Plaintiff's work largely included manual labor, such as landscaping, painting,
6 and setting tile.

7 30. Plaintiff was scheduled to work every Monday through Friday from 9 a.m.
8 until 5:30 p.m., although Defendants expected and requested that Plaintiff begin work at
9 8 a.m. or earlier on most mornings.

10 31. Plaintiff was scheduled to work every Saturday from 10 a.m. until 2 p.m.,
11 although Defendants expected and requested that Plaintiff begin work at 9 a.m. or earlier
12 on most Saturdays.

13 32. Plaintiff was supposed to have Sundays as his day off. However, Plaintiff
14 was required by Defendants to work almost half of the Sundays in any given month.

15 33. In addition, Defendants required that Plaintiff provide on-site security for the
16 Apartments every night, including making rounds on the property several times each
17 night, and being available to tenants and authorities in the event that security was needed.

18 34. Despite Defendants' agreement to pay Plaintiff \$700 each pay period,
19 Defendants initially paid Plaintiff only \$600.

20 35. Defendants paid Plaintiff by personal check and made no payroll
21 withholdings from Plaintiff's wages.

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1 36. After two pay periods of receiving only \$600, Plaintiff requested that
2 Defendants pay the entire \$700 promised to him.

3 37. Defendants complied for only two pay periods and then paid Plaintiff only
4 \$600 during each pay period thereafter, claiming that a deduction was made from
5 Plaintiff's wages for pesticides, despite Plaintiff's objections.

6 38. Plaintiff provided labor and services for Defendants to benefit their real
7 property, and at their request, until Defendants terminated Plaintiff's employment on
8 September 13, 2013.

9 39. Plaintiff timely caused to be recorded a Notice of Claim of Mechanic's Lien
10 (herein as the "Lien") in the Maricopa County Recorder's Office on October 25, 2013,
11 asserting and protecting his right to payment for labors and materials provided for the
12 improvement of the real property at issue in this matter. A true and correct copy of the
13 Lien is attached as Exhibit A and is incorporated herein by this reference.

14 40. Plaintiff has retained the law offices of Phillips Dayes Law Group PC to
15 prosecute this matter on his behalf and has agreed to pay a reasonable attorneys' fee for
16 such labors.
17

18
19 **COUNT ONE**
20 **OVERTIME VIOLATION—29 U.S.C. § 207**

21 41. Plaintiff incorporates and adopts paragraphs 1 through 40 above as if fully set
22 forth herein.

23 42. While employed by Defendants, Plaintiff regularly worked multiple hours of
24 overtime per week.
25

1 43. Plaintiff was a non-exempt employee.

2 44. Defendants have intentionally failed and refused to pay Plaintiff overtime
3 according to the provisions of the FLSA.

4 45. On information and belief, Defendants further engaged in a widespread
5 pattern and practice of violating the provisions of the FLSA by failing to pay Plaintiff in
6 accordance with 29 U.S.C. § 207.

7 46. As the direct and proximate result of Defendants' violations of the FLSA,
8 Plaintiff has suffered damages by failing to receive compensation in accordance with 29
9 U.S.C. § 207.

10 47. Pursuant to 29 U.S.C. § 216, Defendants are liable to Plaintiff for an amount
11 equal to one and one-half times his regular pay rate for each hour of overtime worked per
12 week.

13 48. In addition to the amount of unpaid wages owed to Plaintiff, he is also
14 entitled to recover an additional equal amount as liquidated damages pursuant to 29
15 U.S.C. § 216(b).

16 49. On information and belief, Defendants' conduct in failing to properly
17 compensate Plaintiff, in violation of the FLSA, was willful.

18 50. Defendants have not made a good faith effort to comply with the FLSA.
19 Plaintiff has been required to bring this action to recover his federal overtime
20 compensation remaining due and unpaid, and his statutory liquidated damages, and as the
21 direct and foreseeable result of Defendant's conduct, Plaintiff has incurred costs and
22 attorneys' fees.
23
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25

1 WHEREFORE, Plaintiff respectfully requests that judgment be entered in his
2 favor against Defendants:

- 3 a. Awarding Plaintiff overtime compensation in the amount due for all of
4 his time worked in excess of forty (40) hours per week at a pay rate
5 equal to one and one-half times Plaintiff's regular rates of pay while at
6 work for Defendants, in an amount proved at trial;
- 7 b. Awarding Plaintiff liquidated damages in an amount equal to the
8 overtime award;
- 9 c. Awarding Plaintiff reasonable attorneys' fees, costs, and expenses of the
10 litigation pursuant to 29 U.S.C. § 216(b);
- 11 d. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all
12 amounts awarded under subsections (a) and (b) above from the date of
13 the payment due for that pay period until paid in full;
- 14 e. Awarding Plaintiff post-judgment interest, at the highest legal rate, on
15 all awards from the date of such award until paid in full; and
- 16 f. For such other and further relief as the Court deems just and proper.
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19 **COUNT TWO**
20 **FAILURE TO PAY WAGES**

21 51. Plaintiff incorporates and adopts paragraphs 1 through 50 above as if fully set
22 forth herein.

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1 52. On information and belief, Defendants failed to pay Plaintiff “wages,” as that
2 term is defined by A.R.S. § 23-350, at Plaintiff’s regular rate of pay while Plaintiff was
3 employed by Defendant.

4 53. On information and belief, Defendants’ failures to pay Plaintiff’s wages were
5 willful, unreasonable, and in bad faith.

6 54. Pursuant to A.R.S. § 23-355, Plaintiff is entitled to an award of treble the
7 amount of wages not paid by Defendants.

8 55. Pursuant to, *inter alia*, A.R.S. § 12-341.01, Plaintiff is entitled to an award of
9 attorneys’ fees and costs incurred in this action.

10 WHEREFORE, Plaintiff respectfully requests that judgment be entered in his
11 favor and against Defendants:
12

- 13 A. Awarding Plaintiff regular compensation in the amount due to him for all of
14 Plaintiff’s time worked for which Defendants have not paid Plaintiff;
15 B. Awarding Plaintiff treble the amount calculated pursuant to the preceding
16 paragraph;
17 C. Awarding Plaintiff reasonable attorneys’ fees pursuant to A.R.S. § 12-
18 341.01;
19 D. Awarding Plaintiff costs and expenses reasonably incurred in this action;
20 E. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all
21 amounts awarded under subsections (a) and (b) above from the date of the
22 payment due for that pay period until paid in full;
23

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- 1 F. Awarding Plaintiff post-judgment interest, at the highest legal rate, on all
2 awards from the date of such award until paid in full; and
3 G. For such other and further relief as the Court deems just and proper.

4 **COUNT THREE**
5 **FORECLOSURE OF LIEN**

6 56. Plaintiff incorporates and adopts paragraphs 1 through 55 above as if fully set
7 forth herein.

8 57. Plaintiff provided labor, services, and materials at Defendants' request and
9 for the benefit of Defendants' real property, to wit, the Apartment.

10 58. Plaintiff was a laborer for wages paid by Defendants.

11 59. Plaintiff provided services and materials to Defendants and their real
12 property for which Plaintiff was not compensated by Defendants.

13 60. Plaintiff timely caused to be recorded his Lien with the Office of the
14 Recorder of Maricopa County, Arizona.

15 61. This petition for foreclosure of the Lien is timely.

16 62. Plaintiff is entitled to payment of the amounts stated in the Lien and is
17 entitled to sale of the Apartments to satisfy the wage debt owed to him.

18 63. Plaintiff has incurred attorneys' fees and costs in prosecuting this action and
19 is entitled to the payment of the same.

20 WHEREFORE, Plaintiff respectfully requests that judgment be entered in his
21 favor and against Defendants:
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- a. Foreclosing the Lien and ordering the sale of the Apartments and payment to Plaintiff of amounts owed by Defendants and asserted in the Lien.
- b. Ordering the sale of the land and improvements sold together pursuant to A.R.S. § 33-999.
- c. Setting Plaintiff's Lien at a position of priority to any subsequent encumbrance and equal in priority with any other lien, pursuant to A.R.S. § 33-992.
- d. Determining the priority of any lienholders pursuant to A.R.S. § 33-1000.
- e. Awarding pre-judgment interest at the highest legal rate for the amounts awarded to Plaintiff pursuant to paragraph (a) *supra*.
- f. Awarding post-judgment interest at the highest legal rate from the entry of judgment until paid in full.
- g. Awarding costs and attorneys' fees incurred herein pursuant to A.R.S. § 33-998(B).
- h. For any further relief deemed just and equitable under the circumstances.

COUNT FOUR
DECLARATORY JUDGMENT

64. Plaintiff incorporates and adopts paragraphs 1 through 63 above as if fully set forth herein.

65. Plaintiff and Defendants have a dispute pending related to their employment relationship, an overtime violation under the FLSA, a failure to pay wages, and for the foreclosure of a mechanics' lien.

1 66. The Court has jurisdiction to hear Plaintiffs' request for declaratory relief
2 pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

3 67. Plaintiff is entitled to declarations, and respectfully requests that the Court
4 make declarations as to the following matters and as to other matters deemed appropriate
5 by the Court:

- 6 a. Defendants employed Plaintiff
- 7 b. Defendants are each engaged in an enterprise covered by the overtime
8 provisions of the FLSA.
- 9 c. Plaintiff individually is covered by the overtime provisions of the FLSA.
- 10 d. Defendants failed to properly compensate Plaintiff for his hours worked in
11 excess of forty hours per week, in violation of the overtime provisions of
12 the FLSA.
- 13 e. Plaintiff is entitled to payment of his overtime compensation in an amount
14 equal to one and one-half times his regular rate of pay for each hour worked
15 over forty hours per week, contrary to 29 U.S.C. § 207.
- 16 f. Plaintiff is entitled to liquidated damages in an amount equal to his
17 overtime pay award pursuant to 29 U.S.C. § 216(b).
- 18 g. Defendants failed to pay all wages to which Plaintiff was due by, without
19 limitation, withholding money from each paycheck without any lawful
20 justification.
- 21 h. Defendants' failures to pay Plaintiff's wages were willful, unreasonable,
22 and in bad faith.
- 23
- 24
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- i. Pursuant to A.R.S. § 23-355, Plaintiff is entitled to an award of treble the amount of wages not paid by Defendants.
- j. Plaintiff timely and justifiably recorded a notice of mechanics' lien for labors he provided for wages at Defendants' request and to benefit and improve Defendants' real property, to wit, the Apartments.
- k. Plaintiff timely filed this action seeking enforcement and foreclosure of the Lien.
- l. Plaintiff is entitled to foreclosure of the Lien, to an award in the amounts stated in the Lien, to the sale of the Apartments to satisfy the award, and to a declaration of priority.
- m. Plaintiff is entitled to an award of costs and attorneys' fees.

68. It is in the public interest to have these declarations of rights recorded as Plaintiff's declaratory judgment action serves the useful purposes of clarifying and settling the legal relations at issue and preventing future harm.

69. The declaratory judgment action further terminates and affords relief from uncertainty, insecurity, and controversy giving rise to the proceeding.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor against Defendants:

- a. Declaring, pursuant to the Declaratory Judgments Act, that the acts and practices complained of herein are in violation of the overtime provisions of the FLSA;

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